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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 04, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,

No. 1:19-cr-02032-SMJ-1
1:19-cr-02032-SMJ-2

Plaintiff,

v.

JAMES DEAN CLOUD (01), and
DONOVAN QUINN CARTER
CLOUD (02),

**ORDER DENYING WITH LEAVE
TO RENEW DEFENDANTS'
MOTION TO DISMISS COUNTS 6,
8, 11, 13 & 15 ON MULTIPLICITY
GROUNDS**

Defendants.

Before the Court is Defendant James Cloud's Motion to Dismiss Counts 6, 8, 11, 13 & 15 on Multiplicity Grounds, ECF No. 501. Defendant Donovan Cloud joins in the motion. ECF No. 508. Although Federal Rule of Criminal Procedure 12(b)(3)(B)(ii) requires a defendant to bring a multiplicity challenge before the trial, “[t]he remedy for meritorious multiplicity claims is for the district court to vacate the multiplicitous conviction and sentence.” *United States v. Zalapa*, 509 F.3d 1060, 1065 (9th Cir. 2007). Given that Defendants have not yet been convicted of the 18 U.S.C. § 924(c) counts that they challenge, the Court declines to address their motion at this time. Accordingly, the Court denies the motion with leave to renew.

ORDER DENYING WITH LEAVE TO RENEW DEFENDANTS' MOTION TO
DISMISS COUNTS 6, 8, 11, 13 & 15 ON MULTIPLICITY GROUNDS – 1

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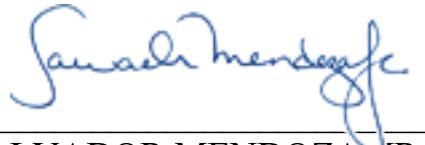
2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Defendants' Motion to Dismiss Counts 6, 8, 11, 13 & 15 on
4 Multiplicity Grounds, **ECF No. 501**, is **DENIED WITH LEAVE TO**
5 **RENEW.**

6 A. Each Defendant may file a renewed motion **no later than two**
7 **weeks after the conclusion of their respective trial.** The Court
8 will not permit a joint motion on this issue.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
10 provide copies to all counsel.

11 **DATED** this 4th day of February 2022.

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14 SALVADOR MENDOZA, JR.
United States District Judge
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